

16 C.J.S. Constitutional Law I II Refs.

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Constitutional Law

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PART I. Nature, Establishment, Amendment, and Construction of Constitutions; Separation of Powers

II. Establishment and Amendment of Constitutions


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Research References

A.L.R. Library

A.L.R. Index, Amendments

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West's A.L.R. Digest, [Constitutional Law](#)  [505](#), [506](#), [508 to 510](#), [520 to 522](#), [525 to 527](#), [530 to 532](#), [535](#), [536](#), [540](#), [541](#), [544](#), [545](#), [547](#), [550](#), [551](#), [553](#), [555](#), [556](#), [558](#), [562](#), [566](#), [567](#), [570 to 575](#)

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16 C.J.S. Constitutional Law I II A Refs.

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PART I. Nature, Establishment, Amendment, and Construction of Constitutions; Separation of Powers

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16 C.J.S. Constitutional Law § 14

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PART I. Nature, Establishment, Amendment, and Construction of Constitutions; Separation of Powers

II. Establishment and Amendment of Constitutions

A. Adoption

§ 14. Establishment and adoption of Federal Constitution

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West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  505, 506

A convention of delegates representing the original states framed the Constitution of the United States, and it was then submitted to and ratified by such states in accordance with its provisions.

The Constitutional Convention delegates found that the Articles of Confederation, binding together the separate governments of the separate states, as they were in the period immediately following the American Revolution, were not sufficient to promote the general welfare with respect to foreign nations or for the protection of the people as citizens of the confederated states.¹ Thus, they ordained and established, along with the states, a federal government and defined its powers by a constitution which they adopted as its fundamental law.² In accordance with its own provision, the Federal Constitution was put into effect in 1789 upon its ratification by conventions in 11 states.³

CUMULATIVE SUPPLEMENT

Cases:

Removing state trade barriers was a principal reason for the adoption of the United States Constitution. [Tennessee Wine and Spirits Retailers Association v. Thomas](#), 139 S. Ct. 2449 (2019).

[END OF SUPPLEMENT]

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Footnotes

¹ U.S.—[U.S. v. Cruikshank](#), 92 U.S. 542, 23 L. Ed. 588, 1875 WL 17550 (1875).

² U.S.—[U.S. v. Cruikshank](#), 92 U.S. 542, 23 L. Ed. 588, 1875 WL 17550 (1875).

³ [U.S. Const. Art. VII](#).
As to state constitutional conventions, generally, see §§ [43](#) to [47](#).

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§ 15. Constitutions of the original states

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West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  508 to 510

The constitutions of the original states, antedating the Constitution of the United States, were not, with one exception, submitted to the people but were framed and promulgated by conventions.

Eleven of the original 13 states adopted constitutions upon separation from England, and all of such constitutions, except one, were promulgated by conventions without submission to the people.¹ The instruments thus adopted acquired their binding force by reason of the approval of the people manifested either by the authority conferred on their representatives in the conventions or by their subsequent acquiescence.²

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Footnotes

¹ Va.—[Kamper v. Hawkins](#), 3 Va. 20, 1 Va. Cas. 20, 1793 WL 248 (1793).

² Va.—[Kamper v. Hawkins](#), 3 Va. 20, 1 Va. Cas. 20, 1793 WL 248 (1793).

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§ 16. Adoption of subsequent state constitutions

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West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  508 to 510

The constitutions of the states admitted into the Union after the Federal Constitution became law were generally framed and adopted by the people of the states in the manner prescribed by the appropriate enabling act of Congress.

Through the power given to it by the United States Constitution¹ over the admission of new states into the Union, Congress has the power to control the formation and the subject matter of the original constitutions of such states.² Congress is the ultimate judge of the due original adoption of the constitution of a new state.³

The constitutions of new states therefore were generally framed and adopted by the people of the state in the manner prescribed by the appropriate enabling act of Congress.⁴ In a few instances, constitutions were adopted without previous congressional authority but were subsequently approved by an act of Congress admitting the state into the Union.⁵ In other instances, the act of admission provided that the new state be admitted after certain changes were made to the constitution submitted.⁶ In any event, every state in the Union has its constitution reduced to written exactitude and precision.⁷

In some states, the approval and adoption by a constitutional convention of everything in the constitution was necessary, and matter contained in the constitution which was not so approved and adopted by the convention was a nullity regardless of the fact that it was submitted and apparently ratified by the people.⁸ However, irregularities in the process of adoption were, in certain cases, cured by subsequent acceptance and recognition of the instrument by the state.⁹

Adoption of constitution by territory.

The people of a territory of the United States cannot adopt a constitution without the assenting action of Congress.¹⁰ Additionally, the fundamental conditions prescribed by Congress in giving such consent must be complied with.¹¹

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Footnotes

¹ U.S. Const. Art. IV, § 3, cl. 1.

² Neb.—[Brittle v. People](#), 2 Neb. 198, 1872 WL 6048 (1873).

³ Neb.—[Brittle v. People](#), 2 Neb. 198, 1872 WL 6048 (1873).

⁴ Okla.—[Mann v. Osborne](#), 1927 OK 418, 128 Okla. 32, 261 P. 146 (1927).
As to the time of taking effect of constitutions of states admitted after formation of the Union, generally, see § 114.
As to the submission of a constitution to Congress as a part of the procedure for admission to the Union, generally, see [C.J.S., States § 4](#).

⁵ U.S.—[McCornick v. Western Union Telegraph Co.](#), 79 F. 449 (C.C.A. 8th Cir. 1897).
Minn.—[Secombe v. Kittelson](#), 29 Minn. 555, 12 N.W. 519 (1882).

⁶ Neb.—[Franklin v. Kelley](#), 2 Neb. 79, 1872 WL 5813 (1872).

⁷ U.S.—[VanHorne's Lessee v. Dorrance](#), 2 U.S. 304, 2 Dall. 304, 28 F. Cas. 1012, No. 16857, 1 L. Ed. 391 (C.C.D. Pa. 1795).

⁸ Idaho—[Higer v. Hansen](#), 67 Idaho 45, 170 P.2d 411 (1946).

- ⁹ Minn.—[Secombe v. Kittelson](#), 29 Minn. 555, 12 N.W. 519 (1882).
Pa.—[Wells v. Bain](#), 75 Pa. 39, 1874 WL 13096 (1874).
As to the cure of certain procedural defects by popular vote, generally, see § 76.
- ¹⁰ U.S.—[Scott v. Jones](#), 46 U.S. 343, 5 How. 343, 12 L. Ed. 181, 1847 WL 5967 (1847).
- ¹¹ Neb.—[Brittle v. People](#), 2 Neb. 198, 1872 WL 6048 (1873).

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PART I. Nature, Establishment, Amendment, and Construction of Constitutions; Separation of Powers

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§ 17. Ordinances and schedules appended to state constitutions

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West's Key Number Digest, [Constitutional Law](#) 🔑 575

While ordinances and schedules appended to a state constitution may be deemed temporary enactments for the purpose of effecting a transition from the old government to the new, the provisions of such ordinances and schedules, adopted as a part of the constitution, may be equally binding with it.

Ordinances and schedules appended to a state constitution, as distinguished from the permanent and fundamental law embodied in the constitution itself, are temporary enactments for the purpose of effecting a transition from the old government to the new and of putting the provisions of the new

constitution into effect.¹ The provisions of such ordinances and schedules, adopted as a part of the constitution, may, however, be equally binding with it.²

In those states in which the constitutions themselves must be ratified by the people, the validity of such ordinances depends on their submission to the people and their ratification in due form.³ Conversely, in the states in which the new constitution is not required to be submitted to the people, valid ordinances may be adopted and proclaimed by constitutional conventions without such submission.⁴

A constitutional convention's authority to pass ordinances and give them validity depends on the powers conferred on the convention by the law which authorizes their assembly.⁵ Where such law does not provide that the convention has the power of independent legislation, the validity of convention ordinances depends on their submission and ratification by the people.⁶

To the extent that an ordinance is legally adopted, it is a part of the supreme law of the state and, within the scope of its meaning, is beyond the control of the legislature.⁷ It cannot, however, prevail against provisions of the permanent part of the constitution.⁸

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Footnotes

- ¹ Mo.—[First Nat. Bank of St. Joseph v. Buchanan County](#), 356 Mo. 1204, 205 S.W.2d 726 (1947).
Pa.—[Com. v. Harrison](#), 51 Pa. D. & C. 139, 1944 WL 2327 (Quar. Sess. 1944).
- ² Del.—[Opinion of the Justices](#), 330 A.2d 764 (Del. 1974).
Nev.—[State ex rel. Herr v. Laxalt](#), 84 Nev. 382, 441 P.2d 687 (1968).
- ³ Ala.—[Ex parte Birmingham & A.R. Co.](#), 145 Ala. 514, 42 So. 118 (1905).
- ⁴ Va.—[Willis v. Kalmbach](#), 109 Va. 475, 64 S.E. 342 (1909).
State constitutional conventions are discussed, generally, in §§ 43 to 47.
- ⁵ Tex.—[Bass v. Albright](#), 59 S.W.2d 891 (Tex. Civ. App. Texarkana 1933), writ refused.
- ⁶ Tex.—[Bass v. Albright](#), 59 S.W.2d 891 (Tex. Civ. App. Texarkana 1933), writ refused.
- ⁷ Okla.—[Cox v. Oklahoma Tax Com'n](#), 1946 OK 124, 197 Okla. 12, 168 P.2d 634 (1946).
- ⁸ Mo.—[State ex rel. Aquamsi Land Co. v. Hostetter](#), 336 Mo. 391, 79 S.W.2d 463 (1934).

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§ 18. Ordinances and schedules appended to state constitutions—Effect on prior statutes

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Statutes enacted pursuant to a prior state constitution, which are not in conflict or inconsistent with the current constitution, remain in full force and effect by virtue of the transition schedule provision that all laws not contrary to, or inconsistent with, the new constitution will remain in force.

Statutes, enacted pursuant to a prior state constitution, which are not in conflict or inconsistent with the current constitution, remain in full force and effect by virtue of a transition schedule provision that all laws not contrary to, or inconsistent with, the new constitution will remain in force until they expire by

their own limitation or are altered or repealed.¹

A statute which is directly contrary to a provision of the new constitution is not, however, saved by a schedule provision² although there is some authority to the contrary.³

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Footnotes

¹ Ill.—[Johnson v. State Electoral Bd.](#), 53 Ill. 2d 256, 290 N.E.2d 886 (1972).

² Mich.—[Dearborn Tp. v. Dail](#), 334 Mich. 673, 55 N.W.2d 201 (1952).
N.J.—[City of Newark v. Charles Realty Co.](#), 9 N.J. Super. 442, 74 A.2d 630 (County Ct. 1950).

³ Mo.—[Collector of Revenue of Jackson County v. Parcels of Land Encumbered with Delinquent Taxes](#), 362 Mo. 1054, 247 S.W.2d 83 (1952).

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